COMMENTS FROM RURAL CARRIERS

1. Key components of the Rural Carve-out or Exemption.
   a. Definition of a rural area.
   b. Restrictions on companies seeking to operate within the rural exemption.
   c. Favorable wholesale pricing.
   d. Maintenance of Rural Access Charge Exemption.
   e. Assured, continued access to all facilities on a UNE/UNE-P basis, regardless of age or type.
   f. Transfer of requirements between ILEC carriers with territory sale or purchase.
   g. Code of Conduct for monopoly ILEC.

BACKGROUND

2. Legally, there is no reason to eliminate UNE-P or access to any UNE. In fact, the FTA explicitly states these are key mechanisms necessary to make local exchange competition a reality. However, the RBOCs are flexing their political and financial muscle in a blatant attempt to circumvent the law through rulemaking favorable to them. These actions by the RBOCs are contrary to the FTA and severely threaten the developing competitive local exchange market to the detriment of consumers and small businesses. Further, their actions directly and negatively impact the business plans CLECs that entered the market under the FTA, a law of the nation, passed by Congress. Meanwhile, the RBOC business plans for entering the mature long distance market have been able to proceed unfettered due to the fiercely competitive and unquestionably open market for long distance that has developed since the 1983 breakup of AT&T. Then, as now, the government needed to intervene to spur competition. AT&T was forced to do things it did not want to do, much like the RBOCs today. The government stayed the course; the result has been significant savings, innovation, and choices for the American consumer.

3. Today we are at a crossroads in the local exchange service market. The monopoly RBOCs want to rewrite the law midstream now that they have their coveted long distance approval. We ask that the government, and particularly the FCC, once again stay the course and enforce the FTA, as written, in order to allow competition to flourish for the benefit of the American consumer.

4. While we are aware that position papers are being written and presented that cover a much broader range of competitive issues, this position paper addresses the need for a Rural CLEC Exemption. Further, this paper outlines an effective method for making competition a reality in rural areas. We believe that without special rules for rural CLECs, rural America will not see the benefits of competition that urban America has seen.

RURAL CLEC EXEMPTION

5. Rural telecommunication companies generally encounter higher build out and operating costs per customer due to lack of customer density. This document outlines a

proposal for an exemption or carve-out for rural companies. The core proposal maintains full access to all unbundled network elements, including UNE-P, at TELRIC prices. (Michigan actually uses a model dubbed TSLERIC and other states may use other accepted methodologies. For simplicity, I will refer to all as TELRIC.) One of the overarching goals of any exemption written into the rules will be administrative simplicity. We believe this administrative simplicity is important for two primary reasons. The first is to minimize the burden on the regulatory body overseeing the exemption. The second reason is that the rules must be clear and enforceable to minimize gamesmanship by companies attempting to utilize the exemption while not really meeting the intended criteria.

DEFINING A RURAL MARKET

6. Several benchmarks were considered for use in defining a rural market. For example, population density by county or zip code, total population of a defined area and wire center size were all considered. Generally using the size of the wire center seems to be the easiest from an administrative standpoint. However the Rural Exemption created in the Access Charge Reform, Seventh Report and Order adopted by the FCC on April 26, 2001 (CC Docket No. 96-262) defines a *non-rural market* as "(1) any incorporated place of 50,000 inhabitants or more" and "(2) an urbanized area, as defined by the census bureau". Therefore by default, areas not meeting these definitions are considered rural and eligible for the rural exemption. The complete discussion on the Rural Exemption created in the order can be found on pages 27 through 34 of the order.

7. The definition that is decided upon should be simple to administer, consistent with other rural definitions and targeted at the intended customer segment. The benchmark in the Access Charge Reform order generally accomplishes these three goals. Using this benchmark as a starting point and then adding clarification may be the best alternative for arriving at a rural market definition.

COMPANY RESTRICTIONS

8. In order to operate under the Rural Exemption, a company's entire local exchange customer base must be located in a rural area. Further any company with ownership in, or

that is owned by, a company operating as a local exchange telephone carrier outside of a rural area, shall not be eligible for the exemption.

FAVORABLE WHOLESALE PRICING

9. Several practical realities for companies employing this Rural Exemption need to be addressed. This section discussed the need for favorable pricing to CLEC qualifying for the Rural Exemption. The recommendation is that companies qualifying for the Rural Exemption receive the most favorable UNE/UNE-P pricing available in a particular market or state. This price is typically the Zone A or Tier 1 UNE TELRIC pricing for the market or state.

10. Rural markets mostly fall into the Zone C or Tier 3 (highest cost) rate bands of the ILEC. Therefore the competing ILEC and other non-rural CLECs will have the opportunity to subsidize the prices they charge in the rural area with customers in the urban (Zone A, Tier 1) and sub-urban (Zone B, Tier 2) service areas. Theoretically, non-rural competitors could sell service in the rural areas at a retail price that contains no margin and still stay in business. The non-rural competitor's intent may not be to put the rural CLEC out of business, but only to have simplified pricing across its entire service area.

11. Rural areas are notoriously underserved while containing populations that would benefit most from competition. CLECs employing the rural exemption will be, by default one hundred percent focused on serving this segment of the population. If regulatory stability becomes a reality, rural CLECs will be quick to deploy advanced services like DSL, Internet billing and other integrated communication services. Further line sharing and/or line splitting needs to be preserved and encouraged in rural areas.

12. The RBOCs have developed two favorite methods of thwarting CLEC competition, removing eligible elements, and raising the cost of elements. Protection needs to be developed that prevents the RBOC from raising the wholesale pricing to the point of making the rural CLEC uncompetitive with the RBOCs retail pricing for similar services.

13. Counterarguments to the favorable pricing provision contained herein will inevitably be made. In reality, the potential negative effect that rural CLECs will have on the bottom line if the RBOC monopolies are negligible when weighed against the benefits CLECs operating under the Rural Exemption will bring to the target customer segment.

MAINTAIN ACCESS RATES AT CURRENT RURAL EXEMPTION LEVELS

14. Some Rural CLECs currently operate under the Rural Exemption allowed for in the Access Charge Reform order (CC Docket No. 96-262, Seventh Report and Order). We propose that this Rural Exemption for Access Charges remain in place. Further, we propose that the Access Charge rate for the Rural Exemption remain at the highest rate band in the NECA Access Tariff or a rate band specifically developed for rural CLECs, whichever is higher.

CONTINUED ACCESS TO ALL FACILITIES

15. The RBOCs are pushing to have new construction made exempt from unbundling requirements. This request is inconsistent with the FTA and should be dismissed. The goal of the RBOCs is remove elements from the required UNE list to maintain its monopoly. The rural exemption should make clear that rural carriers will have access to new construction including fiber to the central office, wire center, curb, home or whatever definition is used.

REQUIREMENTS SHALL TRANSFER BETWEEN CARRIERS

16. Some RBOCs are attempting to shed their rural operations and abandon rural America. We propose that the requirements of the Rural Exemption transfer along with any service territory sold. Specifically, if a service territory is sold that contains territory eligible for the Rural Exemption, the purchasing carrier must keep all elements and services and platforms available to competing carriers at the same terms and conditions the competing carriers received before the sale occurred. Further CLECs already operating in the qualifying market may choose to keep the Zone A UNE/UNE-P pricing of the original owner. Qualifying CLEC entrants after a sale will only be eligible for the current owners' best Zone or Zone A TELRIC pricing.

CODE OF CONDUCT FOR INCUMBENT LOCAL EXCHANGE CARRIER

17. In a true competitive environment customers the size of a typical CLEC would be catered to in just about every way by the supplier. However, because we purchase from a monopoly supplier that we also compete with for retail customers, the relationship is naturally unfriendly and generally combative. Therefore the FCC should develop a Code of Conduct for the ILECs. Specifically, billing accuracy, conduct of personnel responsible for installations and service of CLEC customer facilities, public or private statements to customers about CLECs and other generally expected professional behavior.